

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DOUGLAS HARRY WARENBACK,

Case No. 2:15-cv-01789-APG-VCF

Plaintiff,

ORDER

v.

D.W. NEVEN, et al.,

Defendants.

Before the court is a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, submitted by Douglas Harry Warrenback, a Nevada state prisoner (Dkt. # 1-2). He has now paid the filing fee (see Dkt. #9). The court has reviewed the petition, which sets forth five grounds for relief, pursuant to Habeas Rule 4. As discussed below, ground 1 must be dismissed, and the petition shall be docketed and served on respondents.

In the section of the court's habeas form for ground 1, Warrenback merely recites some of the state procedural history of his cases (Dkt. #1-2, p. 3). He also states that "this ground was exhausted in the petition for a writ of mandamus [with the] Nevada Supreme Court . . . see attached decision." *Id.* The Nevada Supreme Court order Warrenback provides appears to deny two petitions for writ of mandamus requesting: (1) the retrieval of audio recordings of lower court hearings for forensic comparison with transcripts; and (2) that the district court be directed to hold a hearing regarding whether trial counsel transmitted case files to petitioner. *Id.* at 20. First, ground 1 states no discernible supporting facts, in contravention to Habeas Rule 2. Nor does ground 1 appear to implicate federal habeas corpus, as this court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or

1 treaties of the United States.” 28 U.S.C. § 2254(a). Accordingly, ground 1 is dismissed.
2 The petition shall be docketed and served on respondents.

3 A petition for federal habeas corpus should include all claims for relief of which
4 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be
5 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.
6 §2254(b) (successive petitions). If petitioner is aware of any claim not included in his
7 petition, he should notify the court of that as soon as possible, perhaps by means of a
8 motion to amend his petition to add the claim.

9 **IT IS THEREFORE ORDERED** that the Clerk **shall file and ELECTRONICALLY**
10 **SERVE** the petition (Dkt. #1-2) on the respondents.

11 **IT IS FURTHER ORDERED** that respondents shall file a response to the
12 remaining grounds of the petition, including potentially by motion to dismiss, within
13 **ninety (90) days** of service of the petition, with any requests for relief by petitioner by
14 motion otherwise being subject to the normal briefing schedule under the local rules.
15 Any response filed shall comply with the remaining provisions below, which are entered
16 pursuant to Habeas Rule 5.

17 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
18 in this case shall be raised together in a single consolidated motion to dismiss. In other
19 words, the court does not wish to address any procedural defenses raised herein either
20 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the
21 answer. Procedural defenses omitted from such motion to dismiss will be subject to
22 potential waiver. Respondents shall not file a response in this case that consolidates
23 their procedural defenses, if any, with their response on the merits, except pursuant to
24 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
25 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
26 do so within the single motion to dismiss not in the answer; and (b) they shall
27 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
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1 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
2 procedural defenses, including exhaustion, shall be included with the merits in an
3 answer. All procedural defenses, including exhaustion, instead must be raised by
4 motion to dismiss.

5 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
6 shall specifically cite to and address the applicable state court written decision and state
7 court record materials, if any, regarding each claim within the response as to that claim.

8 **IT IS FURTHER ORDERED** that petitioner shall have **forty-five (45) days** from
9 service of the answer, motion to dismiss, or other response to file a reply or opposition,
10 with any other requests for relief by respondents by motion otherwise being subject to
11 the normal briefing schedule under the local rules.

12 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
13 herein by either petitioner or respondents shall be filed with a separate index of exhibits
14 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
15 be identified by the number or numbers of the exhibits in the attachment.

16 **IT IS FURTHER ORDERED** that the parties SHALL SEND courtesy copies of all
17 exhibits to the Reno Division of this court. **While the Local Rules provide that parties**
18 **should send paper courtesy copies of filings over fifty pages, in this instance,**
19 **courtesy copies may be in paper form or as PDF documents saved to a CD—so**
20 **long as each PDF is clearly identified by exhibit number.** Courtesy copies shall be
21 mailed to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, and directed to the
22 attention of “Staff Attorney” on the outside of the mailing address label. Additionally, in
23 the future, all parties shall provide courtesy copies of any additional exhibits submitted
24 to the court in this case, in the manner described above.

25 **IT IS FURTHER ORDERED** that petitioner’s motion to extend time to pay the
26 filing fee (Dkt. #8) is **GRANTED** *nunc pro tunc*.

1 **IT IS FURTHER ORDERED** that petitioner's motion for court to order NDOC to
2 process filing fee (Dkt. #7) is **DENIED** as moot.
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4 DATED: 4 January 2016.

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7 ANDREW P. GORDON
8 UNITED STATES DISTRICT JUDGE
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